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EX PARTE OR LATE FILED

January 22, 1998

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Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW Room 200
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: PrimeCo Personal Communications, L.P.
Notification of Written *Ex Parte* Presentation
Procedures for Reviewing Requests for Relief from States and Local
Regulations Pursuant to Section 332(c)(7)(B)(v) of the
Communications Act of 1934, WT Docket No. 97-192

Dear Ms. Salas:

On behalf of PrimeCo Personal Communications, L.P., and pursuant to Section 1.1206(b)(1) of the Commission's rules, two copies of the enclosed letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, are hereby filed with the Secretary's office.

Please include a copy of this letter in the above-referenced docket. Please contact us if there are questions concerning this matter.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN, LLP


By: Luisa L. Lancetti

No. of Copies rec'd 021
List A B C D E

William L. Roughton, Jr.
Associate General Counsel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 22, 1998

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Daniel Phythyon, Chief
Wireless Telecommunications Bureau
2025 M Street, NW Room 5002
Washington, DC 20554

Re: Federal Preemption of Moratoria Regulation Imposed by State and
Local Governments on Siting of Telecommunications Facilities,
DA 96-2140 / FCC 97-264

Procedures for Reviewing Requests for Relief from States and Local
Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications
Act of 1934, WT Docket No. 97-192

Ex Parte Presentation — Supplement

Dear Mr. Phythyon:

PrimeCo Personal Communications, L.P. ("PrimeCo")¹, hereby submits this brief *ex parte* supplement to the record in the above-referenced proceedings. Specifically, the purpose of this letter is to update the Commission on events relating to PrimeCo's November 25, 1997 *ex parte* presentation.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, two copies of this written presentation are being provided to the Secretary for inclusion in the public record in these proceedings.

¹ PrimeCo is the broadband A/B Block PCS licensee or is the general partner/majority owner in the licensee in the following MTAs: Chicago, Milwaukee, Richmond-Norfolk, Dallas-Fort Worth, San Antonio, Houston, New Orleans-Baton Rouge, Jacksonville, Tampa-St. Petersburg-Orlando, Miami and Honolulu.

PRIMECO PERSONAL COMMUNICATIONS, L.P.

Ex Parte Presentation

January 22, 1998

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In November of 1997, PrimeCo notified the Commission of the renewal of moratorium regulation imposed by Palm Beach County, Florida, a jurisdiction in PrimeCo's Miami-Fort Lauderdale MTA.² PrimeCo cited the Palm Beach ordinance to illustrate that siting moratoria continue to plague CMRS providers' efforts to deploy their systems, and that jurisdictions continue to adopt moratoria without justification.³ PrimeCo hereby advises the Commission that Palm Beach County has since approved a facilities siting ordinance, albeit a very prohibitive one.

However, on January 13, 1998, another local government in Palm Beach County — the Village of Wellington, Florida — adopted a 3 month extension of an ongoing moratorium (copy attached). The six month moratorium will therefore have a total duration of at least 9 months. PrimeCo mentions this more recent moratorium extension to illustrate that, in some cases, moratoria have become a "moving target" which directly hamper service provision. This has certainly been the case in South Florida.

For the reasons discussed in PrimeCo's earlier filings, the Commission should expeditiously preempt moratoria as proposed in its July 28, 1997 Public Notice.

Sincerely,

PRIMECO PERSONAL COMMUNICATIONS, L.P.



William L. Roughton, Jr.
Associate General Counsel

cc: Magalie Roman Salas, Secretary (2)
John Conwell, Wireless Telecom. Bur.
Randall Coleman, CTIA

² See Letter to Dan Phythyon, Chief, Wireless Telecom. Bur., from PrimeCo Personal Communications, L.P., *Ex Parte* Presentation in DA 96-2140/FCC 97-264 and WT Docket No. 97-192, filed November 25, 1997.

³ PrimeCo notes the *ex parte* letter dated December 15, 1997, filed by Ms. Candice Brown of F.A.C.T.S. in response to the November 25, 1997 filing. Ms. Brown's arguments have been addressed in PrimeCo's and other parties' comments submitted in the instant proceedings.

ORDINANCE NO. 97-13

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF THE VILLAGE OF WELLINGTON, FLORIDA, AS AMENDED, AS FOLLOWS: AMENDING SEC. 64.D.32 OF THE UNIFIED LAND DEVELOPMENT CODE; IMPOSING A NINETY (90) DAY MORATORIUM TO BEGIN UPON EXPIRATION OF THE EXISTING MORATORIUM ON THE APPROVAL OF APPLICATIONS FOR DEVELOPMENT PERMITS FOR COMMERCIAL TELECOMMUNICATIONS TOWERS AND RELATED FACILITIES; PROVIDING FOR EXCLUSIONS; PROVIDING FOR THE ACCEPTANCE OF APPLICATIONS; PROVIDING FOR INTERPRETATION OF CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington, Florida is primarily a Planned Unit Development consisting of low-rise residential uses, with limited non-residential uses dedicated primarily to governmental use and limited commercial uses in close proximity to residential properties; and

WHEREAS, the Village has a very limited number of potential sites that would be acceptable for the installation of telecommunications towers and related facilities; and

WHEREAS, Section 47 U.S.C. 332(c)(7) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 expressly reserved the zoning authority of local government relating to telecommunications towers and related facilities; and

WHEREAS, the citizens of the Village have expressed great concern, related to safety issues and to the aesthetic effects of such towers and facilities on neighboring residential properties and on the community as a whole, regarding the location of telecommunications towers and related facilities within the Village; and

WHEREAS, the Village has been diligently investigating the limited potential sites available for telecommunications towers and related facilities in the Village for the purpose of developing a comprehensive zoning plan for the location of such facilities; and

WHEREAS, the Village staff needs limited additional time to complete those studies and to recommend appropriate siting policies to the Village Council to permit the placement of telecommunications towers and related facilities in locations that will balance the interests of public safety, aesthetics, property values and the provision of telecommunications services by use of such facilities; and

WHEREAS, the limited number of potential telecommunications tower and telecommunications antenna sites requires the Village to address the needs of competing providers; and

WHEREAS, the Village will use the time allowed by a 90 day moratorium to reach final determinations regarding (1) which potential sites are suitable for locating telecommunications towers and related facilities; (2) the feasibility of requiring co-location at those sites; and (3) the available technology to reduce the economic and public safety impact of telecommunications towers and related facilities in the community; and

WHEREAS, processing applications for telecommunications towers and related facilities at the present time before completion of the studies may result in the inability to provide adequate sites for competing providers;

WHEREAS, the Village Council has determined that the current provisions within the Unified Land Development Code (ULDC) of the Village of Wellington are inadequate as they relate to compatibility of telecommunications tower siting with surrounding properties, proliferation of towers and encouraging co-location of antennas; and

WHEREAS, the Village Council has directed staff to draft any needed amendments to the ULDC determined to be required to protect the aesthetic, health, safety and welfare concerns found to exist; and

WHEREAS, Village staff has begun the process of researching and drafting any such amendments to the ULDC of the Village of Wellington; and

WHEREAS, the Village Council has directed staff to participate in an intergovernmental task force related to the placement of commercial telecommunication towers and facilities throughout the entire County; and

WHEREAS, to allow for proper study and investigation, the Village adopted a 180 calendar day moratorium on July 22, 1997, relating to all applications for the approval of development permits for commercial telecommunications towers and related facilities, such moratorium to end on January 19, 1998; and

WHEREAS, since the current moratorium was imposed, (1) the Village staff has prepared a map of potential sites; (2) the Village has hired consulting engineers to study the coverage areas generated by existing and potential telecommunications tower and other antenna sites; (3) the Village in December of 1997 received commentaries and a report from the consulting engineer on potential sites; (4) the Village has produced a draft telecommunications tower and facilities zoning ordinance and distributed the same for public and telecommunications industry comment; and (5) the Village has held public hearings on this matter; and

WHEREAS, the current moratorium expires on January 19, 1998, and the Village requires time (1) to review the engineering reports and any additional reports that may be required; (2) to hold additional public hearings; (3) to review comments from the public and the industry and prepare a final proposed telecommunications tower and facilities zoning ordinance; and (4) to adopt the telecommunications tower and facilities zoning ordinance that allocates the limited appropriate sites in the Village on a non-discriminatory basis.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, THAT:

PART 1. Section 6.4.D.22 is hereby amended to add the following language:

Section 6.4.D.22, Communication tower, commercial. AM/FM radio, television, microwave and cellular transmission towers, antennas and accessory equipment and buildings. A commercial communication tower use shall comply with the following supplementary use standards. If this section prohibits a government owned tower from being located at a specific site and the tower is required to protect the public welfare or safety, the applicable criteria of this section may be waived or modified by the Village Council. In such cases the Village Council shall make a finding of fact indicating the justification for the modification.

Moratorium

- (A) The Village Council of the Village of Wellington does hereby impose a ninety (90) day moratorium to begin on January 18, 1998, upon the approval of all applications for development permits for commercial communication towers or facilities, which will have the effect of extending the existing one hundred eighty (180) day moratorium.

If amendments to Section 6.4.D.22 of the ULDC of the Village of Wellington are adopted prior to the final date of the moratorium, such ordinance shall include a provision repealing this moratorium ordinance.

- (B) This ordinance specifically excludes and shall not affect: (1) relocation of towers or facilities due to public right-of-way acquisition; (2) publicly owned towers or facilities required to ensure the public safety of the citizens; and (3) the relocation, structural modification or removal, with the Village's approval, of the communications tower or facilities located at 14000 Greenbriar Boulevard that are owned by Sprint, or other construction deemed necessary by the Village regarding the existing Sprint tower.
- (C) This ordinance precludes co-location of telecommunications antennas and related facilities on existing towers in the Village.
- (D) Applications consistent with the existing ordinance shall be accepted, reviewed, and processed to the point where they are ready to be considered by the reviewing body subject to the following: (1) the applicant will pay all applicable fees; (2) the application will be subject to all regulations in effect after the expiration of the moratorium or any extension thereof; (3) the applicant will sign a hold harmless agreement which recognizes that there may be differences between the current zoning requirements and the requirements that will be in effect at the expiration of any moratorium; (4) the applicant will agree that any application not meeting the terms of the new ordinance will be administratively withdrawn or amended to be consistent with the new requirements after adoption of the new ordinance; and (5) the applicant will further agree that there will be no refund of application fees for costs expended by the Village in the event an application is administratively withdrawn.

PART 2. CAPTIONS:

The captions, section headings, and section designations used in this ordinance are intended for the convenience of users only and shall have no effect in the interpretation of the provisions of this ordinance.

PART 3. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances applying to the Village of Wellington in conflict with any provision of this ordinance are hereby repealed to the extent of any conflict.

PART 4. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this ordinance.

PART 5. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:

The provisions of this ordinance shall become and be made part of the Unified Land Development Code of the Village of Wellington, Florida. The Sections of the ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

PART 6. EFFECTIVE DATE:

The provisions of this ordinance shall become effective upon adoption.

PASSED this 16th day of December, 1997 on first reading.

PUBLISHED this 6th day of January, 1998 in
Palm Beach Post.

PASSED AND ADOPTED this 15th day of January, 1998 on
second and final reading.

VILLAGE OF WELLINGTON, FLORIDA

BY:	FOR:	AGAINST
<u>Mary K. Foster</u> Mary K. Foster, Mayor	<u>✓</u>	<u> </u>
<u>Mr. Carmine A. Priore</u> Mr. Carmine A. Priore, Vice Mayor	<u>✓</u>	<u> </u>
<u>Paul A. Adams</u> Paul A. Adams, Councilmember	<u>✓</u>	<u> </u>
<u>Michael McDonough</u> Michael McDonough, Councilmember	<u>✓</u>	<u> </u>
<u>Thomas M. Wenham</u> Thomas M. Wenham, Councilmember	<u>✓</u>	<u> </u>

ATTEST:

BY: Awilda Rodriguez
Awilda Rodriguez, Village Clerk

ONCE THE 17th AND 18th of November 1997, Dec. 10, 1997 Dec

R5-7